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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

In the Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Indecent Programming and Other Types)
of Materials on Cable Access Channels)

MM Docket No. 92-258

REPLY COMMENTS OF THE COMMUNITY ANTENNA TELEVISION
ASSOCIATION, INC.

Community Antenna Television
Association, Inc.
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005
703/691-8875

December 21, 1992

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**REPLY COMMENTS OF THE COMMUNITY ANTENNA TELEVISION
ASSOCIATION, INC.**

The Community Antenna Television Association, Inc., ("CATA"), is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA filed "Comments" in this proceeding and files these "Reply Comments" on behalf of its members who will be directly affected by the Commission's action.

The common theme expressed among nearly all the comments whether they are from cable operators, state and local governments, or access programmers, is a frustration with the prospect of regulations being imposed that clearly have major constitutional and practical deficiencies. On the other hand, many commentators acknowledged the Commission's dilemma and provided constructive suggestions for implementing the required regulatory scheme. CATA is encouraged that among these suggestions is widespread support for a certification process that requires leased and PEG access channel users to notify the

cable operator of the type of programming that will be shown.

CATA had suggested that operators who established and complied with such a certification process should be deemed to have met their responsibility for restricting indecent, obscene and other prohibited programming, and could not be held liable for the subsequent actions of the programmer.

DISCUSSION

CATA was not alone when it prefaced its "Comments" in this proceeding by asserting that the provisions of Section 10 of the 1992 Cable Act, which the Commission seeks to implement in this proceeding, are an unconstitutional infringement on the rights of cable operators, their subscribers and access programmers. Virtually every other party commenting in this proceeding expressed agreement with that contention including in particular, the exhaustive and persuasive analysis submitted by Alliance for Community Media, et al. We acknowledge, however, that this issue will be decided in the courts and not in this proceeding.

CATA also was not alone in pointing out that a multitude of practical problems make the proposed regulations unworkable, especially for small systems. For instance, we talked about the administrative burden of prescreening every program and how it would lead to the elimination of a good deal of live access programming. Others provided additional examples of practical problems. Intermedia Partners and Blade Communications, et al., describe how the "blocking" requirement may take an entire channel out of service in situations where only a few hours of

"indecent" programming are to be carried, unless the operator goes to the expense of inserting and removing traps or altering set top descramblers, the two most common methods used by systems to block signals. Again, however, we acknowledged that the Commission was required to adopt some sort of regulatory scheme, and so we offered several constructive suggestions to help make the best of the situation.

PROGRAM NOTIFICATION AND CERTIFICATION

CATA's principal suggestion was that the rules provide operators with a "safety zone" freeing them from liability for carriage of obscene, indecent or other prohibited programming if they had established and complied with a procedure of securing certifications from programmers as to the content of the programs to be carried on the access channels. It would be unfair and counterproductive if cable operators were held responsible for programming over which they had virtually no practical control.

Other commentators representing a variety of interests expressed similar ideas. The New York State Commission on Cable Television stated that operators should be permitted to require certifications that programming is not obscene or indecent and that they should be held harmless if proper notice is not received from the programmer. The City of Austin, Texas, and the Manhattan Neighborhood Network, representing two access centers that deal primarily with PEG as opposed to commercial leased access programming, agree. They point out that they have a problem similar to the cable operator's because they deal with

many program producers and would be overburdened if they had to prescreen every program. They understand the need and urge the Commission, as we did, to specifically place the burden of certification on the program producer.

The Boston Community Access and Programming Foundation states, "Individual access producers should have the responsibility of determining whether their programming is obscene or promotes illegal activity..." Moreover, it describes a "notice" program already under way and apparently working well in Boston, that places the burden of identifying offensive programming on the producers. Reading the comments in this proceeding makes clear that those who produce the programming can and ought to be held responsible for informing the cable operator of the content of their programming, and assuming the liability (if any) for their programming.

The "Local Governments" concur as well. "Primary responsibility for identifying obscene material...should be placed on programmers of leased and PEG access channels, rather than on cable operators", they say. And they "...support the proposal to allow operators to require programmers to identify obscene programming and to certify that all other programming does not contain obscene or indecent material."

CONCLUSION


The concept of creating a "safe zone" based upon an established procedure of certification by the program producers as to the content of the programs, has widespread support among

the commentors in this proceeding. The Commission should adopt this certification or "safe zone" concept so that cable operators will be held harmless from liability for carriage of indecent, obscene or other prohibited programming when such a procedure is implemented.

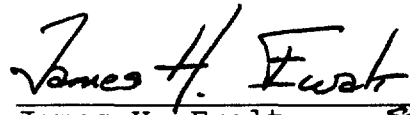
Respectfully submitted,

THE COMMUNITY ANTENNA TELEVISION
ASSOCIATION, INC.

by:


Stephen R. Effros
President

by:


James H. Ewalt ~~SEE~~
Executive Vice President

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Association, Inc.
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Fairfax, VA 22030-1005
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